

FIRST REGULAR SESSION

SENATE BILL NO. 483

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1873S.011

AN ACT

To amend chapter 642, RSMo, by adding thereto two new sections relating to the department of natural resources.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 642, RSMo, is amended by adding thereto two new sections, to be known as sections 642.250 and 642.255, to read as follows:

642.250. 1. Within one hundred twenty days of becoming aware of an alleged noncompliance with any environmental law, regulation, permit granted by the department, or condition of such permit, the department, or any unit of local government to which the department has delegated its functions, shall issue and serve upon the person complained against, a written notice informing that person that the department has evidence of the alleged noncompliance. The notice shall be sent by the department directly to the person complained against through certified mail and, at a minimum, shall contain:

(1) Notification to the person complained against of the required submission of a written response addressing the alleged noncompliance. Such notification shall include the option for the person complained against to meet with appropriate department personnel to resolve any alleged noncompliance that could lead to the filing of a formal complaint;

(2) A detailed explanation by the department of the alleged noncompliance;

(3) An explanation by the department of the actions that the department believes may resolve the alleged noncompliance, including an estimate of a reasonable time period for the person complained against to complete the suggested resolution; and

(4) An explanation of any alleged noncompliance that the department believes cannot be resolved without the involvement of the office of the Missouri attorney general and the basis for the department's belief.

2. A written response to the alleged noncompliance shall be submitted by the person complained against to the department within forty-five days of the receipt of the notice, unless the department agrees to an extension. The response shall be sent by the person complained against to the department through certified mail and, at a minimum, shall contain:

(1) Information in rebuttal, explanation, or justification of each alleged noncompliance;

(2) A proposal for the resolution of any alleged noncompliance which shall include specified times for achieving each resolution. Such proposal may consist of a statement indicating that the person complained against believes that resolution has been achieved; and

(3) If it is the desire of the person complained against, a request for a meeting with appropriate department personnel.

3. If the person complained against fails to respond in accordance with the requirements of subsection 2 of this section, the failure to respond shall be considered a waiver of the requirements established in subsection 1 of this section and nothing shall preclude the department from proceeding pursuant to section 642.255.

4. A meeting requested pursuant to subdivision (3) of subsection 2 of this section shall be held within sixty days of receipt of notice by the person complained against, unless the department agrees to a postponement. The legal representation for the department shall be the department's general counsel. At the meeting, the department shall provide an opportunity for the person complained against to respond to each alleged noncompliance, suggested resolution, and suggested implementation time frame, and to suggest alternate resolutions.

5. If a meeting requested pursuant to subdivision (3) of subsection 2 of this section is held, the person complained against shall, within twenty-one days following the meeting or within an extended time period as agreed to by the department, submit by certified mail to the department, a written response to the alleged noncompliance. The written response shall include:

(1) Additional information in rebuttal, explanation, or justification of each alleged noncompliance;

(2) A proposal for the resolution of any alleged noncompliance which shall include specified times for achieving each resolution. Such proposal may consist of a statement indicating that the person complained against believes that resolution has been achieved; and

(3) A statement indicating that, should the person complained against so

wish, the person complained against chooses to rely upon the initial written response as it is established in subsection 2 of this section.

6. If the person complained against fails to respond in accordance with the requirements of subsection 5 of this section, the failure to respond shall be considered a waiver of the requirements established in subsection 1 of this section and nothing shall preclude the department from proceeding pursuant to section 642.255.

7. Within thirty days of the department's most recent receipt of a written response submitted by the person complained against, the department shall issue and serve upon the person complained against a written notice informing the person of its acceptance, rejection, or proposed modification to the proposed resolution of any alleged noncompliance, as it is contained within the written response. The notice shall be sent by the department directly to the person complained against through certified mail. The department shall not, if the alleged noncompliance is resolved pursuant to the provisions in this section, assess, or seek to assess, any administrative, civil, or criminal penalties for such alleged noncompliance and shall expunge all references to such noncompliance.

8. Nothing in this section shall require the department to enter into any agreements for any alleged noncompliance that the department believes cannot be resolved without the involvement of the office of the attorney general. The attorney general's involvement shall be limited to alleged noncompliance where the department believes that the alleged noncompliance poses a substantial and imminent danger to the public health or welfare or the environment. For the purposes of this section and section 642.255, "substantial and imminent danger" shall mean a danger with a likelihood of serious or irreversible harm. Any involvement from the attorney general shall only be effective upon the written request of the director, with a copy of such request made available to the person complained against.

9. The department's failure to respond to a written response submitted pursuant to subsection 2 of this section shall be deemed an acceptance by the department of the proposal for the resolution of the alleged noncompliance in the written notice issued under subdivision (2) of subsection 2 of this section as it is contained within the written response.

10. If the person complained against complies with the terms of a proposal accepted pursuant to subsection 7 of this section, the department shall not request referral of the alleged noncompliance to the office of the Missouri attorney general. Nothing in this subsection however, is intended to preclude the department from continuing negotiations with the person complained against or

from proceeding pursuant to the provisions of section 642.255 for alleged noncompliance which remain the subject of disagreement between the department and the person complained against. The department shall not, if the alleged noncompliance is resolved pursuant to the provisions of this section, assess, or seek to assess, any administrative, civil, or criminal penalties for such alleged noncompliance, and shall expunge references to the alleged noncompliance, provided the resolution occurs prior to the filing of any civil petition by the attorney general.

11. Nothing in this section is intended to preclude the person complained against from submitting to the department, by certified mail, at any time, notification of the consent to waive the requirements of the provisions of sections 642.250 and 642.255.

642.255. 1. Any alleged noncompliance that remains the subject of disagreement between the department and the person complained against and, as a precondition to the department's referral or request to the office of the Missouri attorney general for legal representation regarding an alleged noncompliance that may be addressed pursuant to subsection 2 or 3 of this section, the department shall issue and serve upon the person complained against a written notice informing that person that the department intends to pursue legal action. The department shall send such notification directly to the person complained against through certified mail. Such notice shall detail the alleged noncompliance and offer the person an opportunity to meet with appropriate department personnel in an effort to resolve any alleged noncompliance that could lead to the filing of a formal complaint. The meeting with department personnel shall be held within thirty days of receipt of notice served pursuant to this subsection upon the person complained against, unless the department agrees to a postponement or the person notifies the department that he or she will not appear at a meeting within the thirty day time period. Nothing in this subsection is intended to preclude the department from following the provisions of subsection 2 or 3 of this section, or from requesting the legal representation of the office of the Missouri attorney general for alleged noncompliance which remains the subject of disagreement between the department and the person complained against. No civil action may be filed until such time as the department determines that there cannot be a resolution of the alleged noncompliance that remains the subject of disagreement between the department and the person complained against.

2. Any alleged noncompliance which remains the subject of disagreement between the department, the office of the Missouri attorney general may file a formal petition and serve upon the person complained against a summons to

appear in a circuit court, in the jurisdiction in which the alleged noncompliance occurred, which shall specify the provision of the environmental law or regulation or permit or term or condition thereof under which such person is said to be in noncompliance, and a statement of the manner in, and the extent to which, such person is said to violate any environmental law or regulation or permit, or term or condition thereof, and shall require the person so complained against to answer the charges of such formal complaint as provided by law.

3. Notwithstanding the provisions of subsection 2 of this section, if the department becomes aware of a noncompliance of environmental law or regulation arising from, or as a result of, voluntary pollution prevention activities or voluntary disclosure of noncompliance, the department shall not proceed with the written notice required by subsection 1 of section 642.250 unless:

(1) The person fails to take corrective action or eliminate the reported noncompliance within a reasonable time; or

(2) The department believes that the noncompliance poses a substantial and imminent danger to the public health or welfare or the environment.

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